

## REMARKS

In paragraph 1 of the office action, the Examiner objected to the oath or declaration because "it fails to identify at least one error which is relied upon to support the reissue application." The applicant draws the Examiner's attention to the copy of the declaration submitted to the United States Patent and Trademark Office on September 1, 1998 and the return post card from the USPTO attached hereto. On page 3 of the Declaration, the applicant has checked the box that identifies the error relied upon as the basis for the reissue as required by 37 C.F.R. §1.175(a)(1). Further, attached to the Declaration is a statement by the applicant further delineating that the invention was not "properly claimed *to the extent* to which [the applicant] was entitled." The statement goes on to say that this "error arose because the patent attorneys who prepared and prosecuted the application leading to the present invention did not fully appreciate the scope of [the applicant's] invention, and because [the applicant] did not appreciate how *limiting were the claims* that issued." The applicant believes that these statements make clear that the applicant believed the claims of the original patent were too narrow: *one error*

According to MPEP §1414, the applicant may see MPEP §1402 "for a discussion of grounds for filing a reissue that may constitute the 'error' required by 35 U.S.C. 251." Under MPEP § 1402, one basis for filing a reissue application is that the claims are too narrow. The applicant respectfully submits that an error was properly designated in accordance with the 37 C.F.R. §1.175(a)(1). This error formed a basis for the new claims filed in the reissue application as well as new claim 15 added herein.

In paragraph 2 of the office action, the Examiner rejected claims 1-14 as being based on a defective declaration. The applicant respectfully traverses the rejection of paragraph 2 for the reasons stated above.

In paragraphs 3 and 4 of the office action, the Examiner rejected claims 10-14 under the judicially created doctrine of obviousness-type double patenting. The Examiner's rejection is noted. The applicant agrees to cancel claims 10-14 without prejudice upon the filing of an appropriate continuing application.

New claim 15 is similar to claim 8 of the original patent in that it requires two support surfaces. In paragraph 5 of the office action, the Examiner indicated that claims 1-9 remain

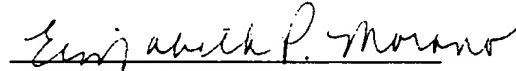
allowable over the record of art. Applicant believes new claim<sup>15</sup><sub>8</sub> is also allowable over the prior art of record.

### CONCLUSION

Attached hereto is a marked up version of the changes made to the claims by the current response. The attached page is captioned "**VERSIONS WITH MARKING TO SHOW CHANGES MADE.**"

The applicant petitions for a three month extension of time under 37 C.F.R. §1.136(a) and encloses a check in the amount of \$920.00 in accordance with 37 C.F.R. §1.17(a)(3). If any additional fees are required for the timely consideration of this application, please charge deposit account number 19-4972.

Respectfully submitted,



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**VERSIONS WITH MARKING TO SHOW CHANGES MADE**

Claims 1-14 remain pending in the application.

In the claims:

Please add claim 15 as follows:

- 15 (new) A method for assessing a subject's ability to utilize support surface inputs from one of the subject's first and second supporting legs, such method comprising:
- A. providing two support surfaces, and standing the subject on the support surfaces so that each of the two support surfaces has only one leg resting thereon;
  - B. fixing the support surface on which the first leg rests, so that it does not move;
  - C. configuring the support surface on which the subject's second leg rests to permit rotation of the subject's foot associated with the second leg as the subject sways, thereby reducing changes in the angle between the orientation of the subject and the inclination of the support surface on which the subject's second leg rests; and
  - D. measuring the subject's ability to maintain an equilibrium position.

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PLEASE DATE STAMP AND RETURN  
The Assistant Commissioner for Patents has received from Bromberg & Sunstein the following re:  
Inventor: **Nashner, Lewis M.** Docket No: **469/129**

Title: **APPARATUS AND METHOD** . . . . . Art Unit:  
Serial/Patent No: **5,551,445**  
**September 3, 1996**

Filing/Issue Date:

**Reissue**  
☒ New Application Transmittal  
☐ Provisional Application Cover Sheet

☒ Description - **20** pages

☒ Claims - **8** pages

☒ Abstract

☒ **11** sheets of drawings  
( ) formal ☒ informal

☒ Declaration & Power of Attorney  
( ) executed ( ) unexecuted

( ) Small Entity Statement

( ) Assignment/Recordation Form Cover Sheet

( ) Completion of Filing Requirements

Examiner:

Date: **September 1, 1998**  
Express Mail No: **EM529205145US**

( ) Amendment Transmittal  
( ) Amendment (Preliminary)

( ) Response

( ) IDS & References

( ) Petition for **1** month Extension

( ) Transmittal of Formal Drawings

( ) Issue Fee Transmittal & Form PTOL-85b

( ) Payment of **1118.00** Maintenance Fee

☒ Check in the amount of \$ **1118.00**

jc518 U.S. PTO  
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